

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

NOV 22 2010

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: James D. Olson

* * * * *

In the Matter of the Accusation of) No. H-4080 SD
) L-2010050041
MATTHEW DOUGLAS MC PHERSON,)
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated October 25, 2010, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock
noon on DEC 13 2010

IT IS SO ORDERED

11-18-2010

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MATTHEW DOUGLAS MC PHERSON,

Respondent.

Case No.: H-4080 SD

OAH No.: 2010050041

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on September 28, 2010.

James Demus, Real Estate Staff Counsel, represented the Complainant.

Respondent appeared and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. The Complainant, Joseph Aiu, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in his official capacity.

2. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.

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Criminal Conviction

3. On March 2, 2009, Respondent and his wife Misty engaged in a verbal argument at their residence while Respondent was drinking alcohol. The argument escalated into a physical confrontation when Respondent - in a drunken rage - slammed a door on Misty's hand while threatening her with further physical violence. Police were dispatched to the scene. Police investigation revealed that Misty sustained a small cut to her right hand and swelling to her right pinky finger. She refused medical assistance. Respondent was arrested and subsequently subjected to criminal proceedings. Thereafter, on July 23, 2009, in the Superior Court of California, County of Riverside, in Case No. SWM084155, Respondent was convicted of violating California Penal Code section 273.5, subdivision (a) (corporal injury to spouse), a misdemeanor.

Rehabilitation and Character

4. As a result of the conviction Respondent served 20 days of house arrest and was placed on a 36 month probation on terms and conditions. He has completed 15 hours of a 40 requirement of community service and still owes \$120 in fines. He has timely completed 52 weeks of a court mandated domestic violence program under the aegis of Beverly Counseling Associates. He has attended all 24 hours of Alcoholics Anonymous (AA) sessions as court required.

5. Respondent has suffered no other conviction. There is no evidence - except for Finding 3 - that Respondent, throughout his life, has been other than in compliance with society's norms and rules.

6. Respondent was accompanied to the hearing by his father, a retired senior probation officer who now invests in, and manages real estate properties. He credibly testified to Respondent's alcohol abuse and to his efforts to stop that abuse. He further credibly testified to Respondent's reconciliation with Misty and to Respondent's attributes as a loving father.

7. Respondent remains close to both his mother and father who live nearby and sees both on a daily basis. He is, presently, reconciled with Misty who proffered by letter the following:

My husband Matt McPherson made a stupid mistake. The pressure of a collapsed economy and two children and a wife to support caused an atypical reaction. Matt remains a caring, devoted husband and a perfect father. Matt tirelessly pursued measures to prevent any future incidents including counseling, volunteer work and a twelve step program. We are certain there will not be a recurrence of his problem.

Respondent and Misty are parents of two girls aged two and one. At present Respondent has stability of family life and fulfills all parental and familial obligations.

8. Respondent on his own initiative has continued to attend AA meetings beyond the 24 sessions that were court-mandated. He has a sponsor and claims a sobriety date of March 3, 2009.

9. Respondent, well educated with a degree from University of California, Riverside devotes much time to volunteer work. He is a Grand Noble of the Oddfellows a group whose charter includes charitable work. Respondent has through the Oddfellows raised funds for local schools to allow them to continue music instruction. Additionally, he has acted as a volunteer coach for Valley Wide Recreation and helped set up donations at a local Thrift Shop. Further, he has volunteered some of his office space for the use of AA.

10. Respondent's employing broker John G. Culton of Brubaker – Colton Real Estate and Development proffered the following written testimonial:

I am the Broker / Manager for Mathew McPherson who is scheduled for an appearance before the Court (this proceeding) concerning past incidents. Over the past year Matt has made a significant commitment to his business and his customers. He has been very diligent in the manner in which he serves his customers and the seriousness he takes with his business.

Brubaker-Culton is a single office, full service brokerage with two managing brokers. We exercise constant supervision over the agents, from the beginning of a transaction to a successful closing. We have comprehensive policies and procedures and we do not allow agents to conduct business outside the parameters of said policies.

Matt McPherson is an exemplary agent, willing to go the extra mile to do things right for his customers and the people he works with.

Respondent has been a licensee since 2003 with no record of discipline.

11. Respondent, open and honest in his testimony, has a change in attitude from that which existed on March 2, 2009. That change started with his pledge to remain sober beginning on March 3, 2009. Respondent's change in attitude was demonstrated by his credible testimony and the credible testimony of his father.

LEGAL CONCLUSIONS

Applicable Statutes

1. Business and Professions Code section 490 provides in pertinent part:

(a) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

(c) . . . a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . .

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2. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following. . . .

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(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime substantially related to the qualifications, functions or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

Substantial Relationship

3. California Code of Regulations, title 10, section 2910, provides in part:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480, (a)(2) or 480, (a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of sections 480 and 490 of the Code if it involves:

- - -

- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

- - -

4. The necessary elements of a crime under Penal Code section 273, subdivision (a) include the threat of doing substantial injury to the person or property of another. Accordingly, the crime set forth in Finding 3 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivision (a)(8), to the qualifications, functions or duties of a real estate licensee.

Violation

5. Respondent's conviction for the substantially related crime set forth in Finding 3 constitutes grounds to discipline his real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

Penalty Considerations

6. California Code of Regulations, title 10, section 2912, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of a licensee who is subject to disciplinary action on account of a crime or act committed by the Respondent. Additionally, the public interest must be considered in that the objective of an administrative proceeding relating to licensing is to protect the public.¹

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¹ *Fahmy v. MBC* (1995) 38 Cal.App. 4th 8107, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385.

7. Respondent is still on probation and the crime has not been expunged or otherwise abrogated. Respondent's conviction is less than two years remote. However, by reason of Findings 4 through 11 Respondent has complied with a number of the remaining applicable criteria. Respondent has suffered no other conviction and has no history or pattern of wrongdoing. At present Respondent is a person of good character. Accordingly, by reason of Respondent's record of rehabilitation to date, licensure of Respondent, on a restricted status for a two year period, is consistent with the public interest.

ORDER

All licenses and licensing rights of Respondent Matthew D. McPherson under the Real Estate Law are revoked, provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days of the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Six months after the issuance of the restricted license, and at six months intervals thereafter during the term of any restricted license issued pursuant to this Decision, Respondent shall provide proof acceptable to the Real Estate Commissioner that, during the preceding six months, Respondent has, each and every week, attended one or more sessions of Alcoholics Anonymous or similar 12 Step or substance abuse program, or that such attendance in any week was impractical due to travel for work, the illness of Respondent or a member of Respondent's family, vacation, incarceration, residential treatment for substance abuse, extreme personal hardship for Respondent or a member of Respondent's family, or family emergency. Respondent shall submit such proof to the Los Angeles Crisis Response

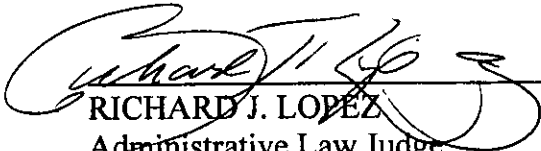
Team Manager of the Department of Real Estate. The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with section 11500, *et seq.*, of the Government Code, if such proof is not timely submitted as provided for herein or as provided or in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until such proof is submitted or until Respondent enters into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

- (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating activities for which a real estate license is granted.

6. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated: October 25, 2010


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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FILED

MAR 21 2010

DEPARTMENT OF REAL ESTATE

By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MATTHEW DOUGLAS MC PHERSON,)
13 Respondent.)
14

No. H-4080 SD

A C C U S A T I O N

15 The Complainant, Joseph Aiu, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against MATTHEW DOUGLAS MC PHERSON, ("Respondent") alleges as
18 follows:

19 1.

20 The Complainant, Joseph Aiu, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 in his official capacity.

23 2.

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 California Business and Professions Code ("Code"), as a real
27 estate salesperson.

1 3.

2 On or about July 23, 2009, in the Superior Court of
3 California, County of Riverside, in case no. SWM084155,
4 Respondent was convicted of violating California Penal Code
5 Section 273.5(a) (corporal injury to spouse), a misdemeanor.
6 Said crime bears a substantial relationship under Section 2910,
7 Title 10, Chapter 6, California Code of Regulations to the
8 qualifications, functions or duties of a real estate licensee.

9 4.

10 The crime of which Respondent was convicted, as
11 described in Paragraph 3 above, constitutes cause under Sections
12 490 and 10177(b) of the Code for the suspension or revocation of
13 the license and license rights of Respondent under the Real
14 Estate Law.

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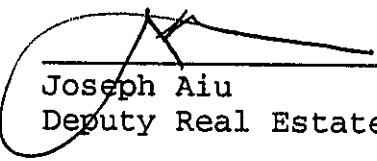
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, MATTHEW DOUGLAS MC PHERSON, under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code)
7 and for such other and further relief as may be proper under
8 other applicable provisions of law.

9 Dated at San Diego, California

10 this 9 day of November, 2009.

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13 Joseph Aiu
14 Deputy Real Estate Commissioner
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25 cc: MATTHEW DOUGLAS MC PHERSON
26 The Culton Corporation
27 Joseph Aiu
Sacto.